

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-003852

03/11/2004

HONORABLE ROBERT BUDOFF

CLERK OF THE COURT
L. Carlson
Deputy

IN RE THE MARRIAGE OF
LIANE BROSEMANN

FILED: 03/15/2004

LIANE BROSEMANN
9020 N 51ST LN
GLENDALE AZ 85302

AND

JOHN R NEGLEY

JOHN R NEGLEY
6575 W OCOTILLO RD #1001
GLENDALE AZ 85301

CHRISTINE MULLENEAUX
20229 N 67TH AVE
SUITE C-4
GLENDALE AZ 85308-6665

MINUTE ENTRY

This matter was taken under advisement following the Evidentiary Hearing on March 10, 2004, on Father's Emergency Petition for Modification of Custody filed January 28, 2004, and the Court having now considered the testimony presented by the parties, the remarks presented by the Guardian ad Litem, Christine Mulleneaux, and the arguments presented by the parties, finds as follows:

1. The parties' marriage was dissolved by Order of November 19, 2002.
2. The parties are the parents of three minor children, Brianna Negley, born February 8, 1996, Kaitlin Negley, born December 7, 1998, and Dillan Negley, born April 12, 2000.
3. In the Decree of Dissolution of Marriage, the parties were awarded joint custody pursuant to their agreement reached

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in mediation on September 26, 2002. The parenting plan provided that “the children would be in the care of Father every other weekend from Friday evening until Sunday evening and in the alternate week they will be in his care from Monday after school until Tuesday evening.” Additional provisions were put in place for travel/vacation and holidays. The agreement of the parties provided that they would cooperate with each other in making joint decisions in the best interest of the children, including decisions with regard to the children’s educational needs and their medical and dental decisions.

4. Father’s emergency petition alleges that Mother “continuously neglects the care and well being of the children by failing to provide proper housing, medical care, and insuring their attendance in school.” He also alleges that she “intends to move the children out of the country and state without Respondent (Father’s) consent.” He asks in his emergency petition that the children be placed in his custody due to Mother’s abandonment and the fact that her whereabouts were unknown.
5. The Guardian ad Litem, Christine Mulleneaux, has made a thorough investigation and a report to the Court presented orally. She indicates that she has determined that there is no substantiation of the allegations made by Father. She believes that Mother has met the children’s medical needs, that her housing situation, although somewhat in flux, is appropriate, and that, for the most part, their attendance in school has been consistent. It is noted that of the children, only Brianna is in regular school at this time.
6. Father has testified that, in his opinion, Mother has not met the children’s recent medical needs, she has failed to supply him with appropriate insurance information, she has had to move on at least three occasions in the last six months, and that Brianna, based on attendance records he has procured from her school, indicate that she has been consistently late and absent. Other than Father’s own statements, there is no verification through admissible evidence of his claims.

Father resides with his new wife in a three-bedroom home with his wife’s three children from a prior marriage,

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Father's three children from this marriage, when they are with him, and, possibly, his wife's daughter's boyfriends/husbands. Father is employed currently earning \$9.00 per hour. He is well behind in his child support obligation which was previously set by the Court at \$428.00 per month.

7. Mother is currently not married but living with her boyfriend. She has been in transition in terms of her residences for the past few months but has testified that she is moving into a better neighborhood and a better home as of this coming Friday, March 12, 2004. She denies Father's claims that she has not provided appropriate care for the children and that her home life is unstable even though she does acknowledge a number of different residences recently.
8. Both parties have indicated their belief that they are not able to communicate and cooperate with each other to the extent necessary for an award of joint custody to be effective, although they do acknowledge that joint custody would be in the children's best interest. Each has alleged that the other is responsible for the lack of communication. Both parties have made complaints to the police departments of the various jurisdictions in which they have lived relative to judicial interference and Father has made a CPS complaint on Mother. No criminal charges have been filed against either party and the CPS referral has been deemed unsubstantiated.
9. It is clear that both parties have financial issues which have created part of their conflict. Father's failure to pay child support in a timely fashion has caused Mother issues with regard to maintaining stable housing and neither party is able to afford medical insurance coverage for the children and they are on AHCCCS.
10. On February 17, 2004, after an emergency hearing on Father's petition, the Court modified custody on a temporary basis to permit the children to reside with Father during the week and with Mother during the weekends. The Court determines at this time that there is

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no basis for the temporary order to remain in full force and effect.

11. The Guardian ad Litem is concerned, from conversations with the children, that Father has been coercing the children to give false information to the Guardian ad Litem relative to the number of people residing in his residence. Father has denied this allegation, but it is clear that if it is true, it is not appropriate. The GAL also believes that Mother is more likely than Father to promote the children's relationship with Father.

Based upon matters presented,

IT IS ORDERED denying Father's Petition for Modification of Custody on an emergency basis. The Court finds that Father's allegations are unsubstantiated and that the change of custody requested by Father is not in the children's best interest.

IT IS FURTHER ORDERED, however, with the Court having considered the provisions of ARS 25-403, terminating joint custody as the Court finds it is no longer viable in light of the parties' continued high conflict and their inability to communicate and cooperate with each other.

IT IS ORDERED awarding sole custody of the children to Mother so that she can have sole decision-making authority over the children's education and health needs. In this regard, however, the Court does not believe it in the children's best interest that once they start school in any one particular school year, that they change schools as frequently as they have done so in the past.

IT IS FURTHER ORDERED, however, that the parenting time plan previously ordered by the Court on November 19, 2002, pursuant to the parties' agreement reached in mediation on September 26, 2002, is affirmed.

IT IS FURTHER ORDERED that in the future exchanges for the children shall take place without any personal contact between the parents. The parties shall share responsibility for transportation. The party that is receiving the children at the beginning or end of any parenting time shall be responsible to pick up the children at the other party's residence by driving to the curb in front of the house. The children shall then be sent directly to the receiving party's vehicle. The exchanges may take place at daycare if the children are in daycare at the time of any necessary exchanges.

IT IS FURTHER ORDERED that, in the future, Mother shall be responsible for providing medical insurance coverage for the children, through AHCCCS if necessary and

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Mother shall provide medical insurance information to Father immediately. Any necessary non-covered medical/dental expenses shall be shared equally.

During the time that the children are with the other parent, the non-custodial parent shall be permitted phone contact with the children without interference. The phone calls shall not last more than 15 minutes per day. There shall be no taping or recording of any phone conversations at any time.

With regard to the issue of child support, although the matter is not formally before the Court at this time, Mother has stated that Father has not paid child support for over a year and this fact has been acknowledged by Father. No petition for contempt for failing to pay child support or request to modify child support has been filed. If either party wishes relief in this area, appropriate pleadings shall be filed with the Court.

No further petitions for modification of custody will be considered by the Court, other than on an emergency basis, unless the parties first participate in mediation services through Conciliation Services or through a private mediator prior to such petition being filed.

IT IS FURTHER ORDERED relieving the Guardian ad Litem, Christine Mulleneaux, from further responsibility in this matter.

IT IS FURTHER ORDERED that the requirements of Rule 58(d), Ariz. R. Civ. P., are waived out of necessity by the Court to shorten the administrative time involved in the processing of a separate written order, and, in the interest of judicial economy. Accordingly,

IT IS ORDERED signing this minute entry as a formal written Order of the Court.

/ s / HONORABLE ROBERT BUDOFF

JUDICIAL OFFICER OF THE SUPERIOR COURT